IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 537 OF 2006

MR. IGNATIUS BRAGANZA, CALANGUTE, BARDEZ GOA. ....Petitioner

Versus

MR. THOMAS BRAGANZA, CALANGUTE, BARDEZ GOA. ....Respondent

Mr. F.E. Noronha, Advocate for the petitioner.

None present for respondents.

Coram:- J. N. PATEL, J.

Date:- 13th December, 2006

P.C.

1. Heard.

2. On the last date Court had made clear to the parties that it will dispose of the matter on the next date, if they do not arrive at any settlement and therefore the matter was adjourned for three weeks for settlement.

3. It appears that the parties are real brothers who are litigating over the property in dispute.

4. The petitioner, the original defendant no.1 moved an application for amendment which came to be rejected by the impugned order. There were two applications made by the petitioner, one was seeking leave of the Court to produce documents and the other was for seeking amendment. The Trial Court permitted the petitioner/original defendant no.1 to file documents, but rejected his application for amendment.

5. For the disposal of this petition, it is not necessary that the notice to other defendants is required to be given, and who are also not joined as party respondents.

6. The Trial Court by the impugned order arrived at a finding that the application for amendment has been made after the issues were settled on 4.7.2005 and the trial has commenced on 15.9.2005 and thereafter the matter was adjourned for cross of the plaintiff and for the said reasons, such an application for amendment cannot be allowed.

7. This Court finds that the reasons given by the Trial Court for rejecting the application for amendment are not justifiable, particularly when the Trial Court permits the petitioner/defendant to tender documents, there is no reason why the application for amendment ought not to be allowed. The application need not be rejected merely on the ground that it is made at a stage when the trial has commenced and the plaintiff has stepped in the witness box awaiting his cross examination.

8. Therefore the impugned order is quashed and set aside.

9. The application for amendment is allowed. The petitioner to carry out necessary amendment within a weeks time, needless to say that the respondent/plaintiff and other parties to the suit may file consequential amendment in reply to the amendment sought by the petitioner/defendant in his written statement if it is so required.

10. The petition stands disposed of accordingly, with no order as to costs.

11. Authenticated copy of the Order be furnished to the learned Counsel for the parties for communicating it to the Trial Court.

J. N. PATEL, J.

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